

SENATE BILL 383

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R3  
SB 389/02 - JPR

2003 Regular Session  
3lr0269

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By: **Senators Ruben, Giannetti, Hollinger, Jimeno, Lawlah, and Teitelbaum**  
Introduced and read first time: January 31, 2003  
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Custodian Liability Warning - Offender**  
3 **Detention - Vehicle Impoundment (John's Law)**

4 FOR the purpose of requiring law enforcement agencies to provide certain custodians  
5 with a written statement advising of potential criminal or civil liability for  
6 allowing or facilitating a person who has been arrested for a certain drunk or  
7 drugged driving violation to operate a motor vehicle while the person remains  
8 under the influence of alcohol or impaired by alcohol or drugs; requiring a  
9 custodian to acknowledge, in writing, receipt of the statement or, if the  
10 custodian refuses, requiring the law enforcement agency to record that the  
11 statement was provided but the custodian refused to sign an acknowledgment;  
12 requiring a law enforcement officer to detain certain persons based on probable  
13 cause of a violation of certain drunk or drugged driving offenses for a certain  
14 period of time; requiring the arresting law enforcement agency to impound for a  
15 certain period the motor vehicle that the arrestee was operating at the time of  
16 the arrest; establishing requirements for the release of a motor vehicle  
17 impounded under this Act; requiring the Attorney General to perform certain  
18 duties and adopt certain regulations; clarifying that this Act does not impose a  
19 duty on certain physicians or other health care providers; defining certain  
20 terms; and generally relating to drunk or drugged driving.

21 BY adding to  
22 Article - Transportation  
23 Section 21-902.1  
24 Annotated Code of Maryland  
25 (2002 Replacement Volume)

26 Preamble

27 WHEREAS, John Elliott, a distinguished member of the United States Naval  
28 Academy Class of 2000, was killed by a drunken driver while driving from Annapolis,  
29 Maryland to New Jersey on July 22, 2000; and

30 WHEREAS, The person whose car struck John's car had been arrested on a  
31 drunk driving charge 3 hours earlier and released to the custody of a friend, but

1 nevertheless had resumed driving until the accident killed both men and injured  
2 Kristen Hohenwarter of Westminster, Maryland; and

3 WHEREAS, In the aftermath of John's death, the General Assembly believes it  
4 important to enact a law, such as one recently enacted in New Jersey, that helps  
5 protect innocent individuals such as John Elliott from drunk or drugged drivers who  
6 resume driving shortly after they are arrested; now, therefore,

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Transportation**

10 21-902.1.

11 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (2) "ARRESTEE" MEANS A PERSON WHO HAS BEEN ARRESTED FOR A  
14 VIOLATION OF § 21-902 OF THIS SUBTITLE.

15 (3) "CUSTODIAN" MEANS A PERSON WHO, IN RESPONSE TO A SUMMONS  
16 BY OR ON BEHALF OF AN ARRESTEE, APPEARS AT A LAW ENFORCEMENT AGENCY TO  
17 TRANSPORT OR ACCOMPANY THE ARRESTEE FROM THE LAW ENFORCEMENT  
18 AGENCY.

19 (B) (1) A LAW ENFORCEMENT AGENCY SHALL PROVIDE A CUSTODIAN WITH  
20 A WRITTEN STATEMENT ADVISING OF POTENTIAL CRIMINAL LIABILITY UNDER §  
21 26-101 OF THIS ARTICLE OR CIVIL LIABILITY FOR ALLOWING OR FACILITATING THE  
22 ARRESTEE'S OPERATION OF A MOTOR VEHICLE WHILE THE ARRESTEE REMAINS:

23 (I) UNDER THE INFLUENCE OF ALCOHOL OR UNDER THE  
24 INFLUENCE OF ALCOHOL PER SE;

25 (II) IMPAIRED BY ALCOHOL;

26 (III) IMPAIRED BY DRUGS OR DRUGS AND ALCOHOL; OR

27 (IV) IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

28 (2) (I) THE CUSTODIAN SHALL ACKNOWLEDGE, IN WRITING, RECEIPT  
29 OF THE STATEMENT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

30 (II) IF THE CUSTODIAN REFUSES TO ACKNOWLEDGE RECEIPT OF  
31 THE STATEMENT, THE LAW ENFORCEMENT AGENCY SHALL RECORD THAT THE  
32 STATEMENT WAS PROVIDED BUT THE CUSTODIAN REFUSED TO SIGN AN  
33 ACKNOWLEDGMENT.

34 (C) EXCEPT AS OTHERWISE AUTHORIZED UNDER LAW, A LAW ENFORCEMENT  
35 OFFICER SHALL DETAIN AN ARRESTEE BASED ON PROBABLE CAUSE THAT THE

1 ARRESTEE VIOLATED § 21-902 OF THIS SUBTITLE, FOR A PERIOD UNTIL THE LATER  
2 OF:

3 (1) 12 HOURS AFTER THE ARREST; OR

4 (2) THE TIME THE ARRESTEE IS ABLE TO OPERATE A MOTOR VEHICLE  
5 SAFELY WITHOUT VIOLATING ANY PROVISION OF THIS ARTICLE.

6 (D) THE ARRESTING LAW ENFORCEMENT AGENCY SHALL IMPOUND THE  
7 MOTOR VEHICLE THAT THE ARRESTEE WAS OPERATING WHEN ARRESTED AND MAY  
8 NOT RELEASE THE MOTOR VEHICLE TO THE ARRESTEE UNTIL THE LATER OF:

9 (1) 12 HOURS AFTER THE ARREST; OR

10 (2) THE TIME THE ARRESTEE MEETS THE CONDITIONS OF SUBSECTION  
11 (F) OF THIS SECTION.

12 (E) A MOTOR VEHICLE IMPOUNDED UNDER THIS SECTION MAY BE RELEASED  
13 TO A PERSON OTHER THAN THE ARRESTEE BEFORE THE END OF THE IMPOUNDMENT  
14 PERIOD DESCRIBED UNDER SUBSECTION (D) OF THIS SECTION ONLY IF:

15 (1) THE MOTOR VEHICLE IS NOT OWNED OR LEASED BY THE ARRESTEE  
16 AND THE PERSON WHO OWNS OR LEASES THE MOTOR VEHICLE CLAIMS THE MOTOR  
17 VEHICLE AND MEETS THE CONDITIONS FOR RELEASE SPECIFIED IN SUBSECTION (F)  
18 OF THIS SECTION; OR

19 (2) (I) THE MOTOR VEHICLE IS OWNED OR LEASED BY THE ARRESTEE;

20 (II) THE ARRESTEE ALLOWS THE RELEASE OF THE MOTOR  
21 VEHICLE TO ANOTHER PERSON WHO HAS ACKNOWLEDGED, IN WRITING, RECEIPT OF  
22 THE STATEMENT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION; AND

23 (III) THE CONDITIONS FOR RELEASE SPECIFIED IN SUBSECTION (E)  
24 OF THIS SECTION ARE MET.

25 (F) A MOTOR VEHICLE IMPOUNDED UNDER THIS SECTION MAY NOT BE  
26 RELEASED UNLESS THE PERSON CLAIMING THE MOTOR VEHICLE:

27 (1) PRESENTS A VALID DRIVER'S LICENSE, PROOF OF OWNERSHIP OF OR  
28 LAWFUL AUTHORITY TO OPERATE THE MOTOR VEHICLE, AND PROOF OF VALID  
29 MOTOR VEHICLE INSURANCE FOR THAT MOTOR VEHICLE;

30 (2) IS ABLE TO OPERATE THE MOTOR VEHICLE SAFELY WITHOUT  
31 VIOLATING ANY PROVISION OF THIS ARTICLE; AND

32 (3) SUBJECT TO REVIEW BY THE DISTRICT COURT, MEETS ANY OTHER  
33 REASONABLE CONDITION FOR RELEASE THAT IS ESTABLISHED BY THE LAW  
34 ENFORCEMENT AGENCY.

35 (G) A LAW ENFORCEMENT AGENCY THAT IMPOUNDS A MOTOR VEHICLE  
36 UNDER THIS SECTION MAY CHARGE A REASONABLE FEE FOR TOWING AND STORAGE

1 OF THE MOTOR VEHICLE AND MAY RETAIN THE MOTOR VEHICLE UNTIL THE FEE IS  
2 PAID.

3 (H) THE ATTORNEY GENERAL SHALL:

4 (1) ESTABLISH THE CONTENT AND FORM OF THE WRITTEN STATEMENT  
5 OF LIABILITY AND ACKNOWLEDGMENT OF RECEIPT DESCRIBED UNDER SUBSECTION  
6 (B) OF THIS SECTION; AND

7 (2) ADOPT REGULATIONS TO CARRY OUT THIS SECTION.

8 (I) THIS SECTION DOES NOT IMPOSE A DUTY ON A PHYSICIAN OR OTHER  
9 HEALTH CARE PROVIDER INVOLVED IN THE TREATMENT OR EVALUATION OF THE  
10 ARRESTEE.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
12 effect October 1, 2003.